

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27 Juvenile Delinquents
SPONSOR(S): Antone
TIED BILLS: **IDEN./SIM. BILLS:** SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee		White	White
2) Fiscal Council			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Florida statute does not currently address issues regarding the citizenship of delinquents referred to the Department of Juvenile Justice (DJJ).

The bill amends state delinquency law to require a juvenile probation officer to: (a) determine during the intake process whether each child referred to the DJJ is, or is suspected of being, illegally in the United States (U.S.); and (b) to report each child found to be, or suspected of being, illegally in the U.S. to the DJJ and the federal Bureau of Customs and Border Protection.

The bill also requires the DJJ to establish an automated, centralized database to collect citizenship information for all children referred to the DJJ and to establish methods for sharing this information with specified federal and state law enforcement agencies and the state court system.

Further, the bill authorizes delinquency courts that have jurisdiction of an adjudicated, foreign delinquent child, who is not in the U.S. in a legal status, to order: (a) that the child be returned to his or her country of origin; and (b) the DJJ to transfer physical custody of the child to the federal Bureau of Customs and Border Protection for removal from this country.

The bill provides an effective date of July 1, 2006.

The DJJ states that the fiscal impact of this bill indeterminate. See Fiscal Analysis and Economic Impact Statement, *infra*.

The bill has several drafting issues, including that it appears to unconstitutionally authorize state delinquency courts to order the return of an adjudicated delinquent child, who is illegally in this country, to his or her country of origin. See III. A. CONSTITUTIONAL ISSUES and III. C. DRAFTING ISSUES OR OTHER COMMENTS, *infra*. It is anticipated that an amendment will be filed to address these issues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill increases the responsibilities of the Department of Juvenile Justice (DJJ) by requiring it to determine if a child referred to it is, or is suspected of being, in the United States (U.S.) illegally, and if so, to report that child to the federal Bureau of Customs and Border Protection. It also increases the DJJ's rulemaking authority by requiring it to adopt rules relating to its collection of citizenship information for all children referred to it. Further, It increases the authority of courts to order that an adjudicated, foreign delinquent child, who is illegally in the U.S., be returned to his or her country of origin.

Maintain public security – The bill increases the likelihood that federal immigration authorities will be made aware of delinquents who are illegally in the U.S.

B. EFFECT OF PROPOSED CHANGES:

Immigration and Nationality Act: The Federal Immigration and Nationality Act (INA)¹ governs the admission of all foreigners to the U.S. The INA defines an “alien” as any person not a citizen or national² of the U.S.³ and sets forth the rules for admission to, and exclusion from, the U.S.

The chief categories of admission status under the INA for aliens include the following:

- Nonimmigrant visa status meaning the admission is for a period of time prescribed by the U.S. Attorney General in regulation.⁴ An alien who does not depart at the expiration of this period of time subjects himself or herself to deportation.⁵
- Immigrant visa status meaning the person is a lawful permanent resident of the U.S.⁶ These persons possess Alien Registration Receipt Cards, popularly referred to as green cards.
- Naturalized citizen meaning the person has renounced his or her former nationality and is granted all privileges of a native citizen in the U.S., except that he or she may not become President of the U.S.⁷
- Refugee status meaning the person is not physically present in the U.S. and is seeking admission based upon grounds that he or she is unable or unwilling to return to their country of nationality because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸
- Asylee status meaning the person is physically present in the U.S. and is seeking admission based upon a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion, if made to return to his or her country of nationality or his or her last place of habitual residence.⁹

¹ Immigration and Naturalization Act of 1952, 8 U.S.C.A. §§ 1101 et seq., as amended.

² A “national” is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the United States. Presently, the only noncitizen nationals of the U.S. are residents of the American Samoa and Swains Island. *The ABC's Of Immigration - Immigration Terminology, Part I*, Siskind's Immigration Bulletin, <http://www.visalaw.com/03aug1/2aug103.html>.

³ 8 U.S.C.A. § 1101(a)(3).

⁴ 8 U.S.C.A. § 1184(a).

⁵ 8 U.S.C.A. § 1227(a)(1).

⁶ 8 U.S.C.A. § 1101(15).

⁷ 8 U.S.C.A. §§ 1422.

⁸ 8 U.S.C.A. § 1101(a)(42).

⁹ 8 U.S.C.A. § 1158(a).

Pursuant to the INA, an alien is subject to deportation if he or she falls within one or more of the statutory classes of deportable aliens.¹⁰ The classes of deportable aliens include nonimmigrant aliens who do not maintain the conditions attached to their admission status¹¹ and aliens who commit specified crimes.^{12 13}

Bureau of Immigration and Customs Enforcement: The Bureau of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security is responsible for the identification, apprehension and removal of illegal aliens from the U.S., and is further authorized to detain deportable aliens and to place such aliens in removal, i.e., deportation, proceedings before a federal immigration judge.¹⁴

ICE operates the Law Enforcement Support Center (LSEC) and its website states:

Located in Williston, Vermont, the LESC operates 24 hours a day, 365 days a year, to supply real-time assistance to law enforcement officers who are investigating or have arrested foreign-born individuals involved in criminal activity. The primary users of the LESC are state and local law enforcement officers seeking information about aliens encountered in the ordinary course of their daily enforcement activities. The LESC receives queries from federal, state, and local correctional and court systems seeking information about individuals in custody or encountered elsewhere in a criminal justice system. Law Enforcement officers have immediate access to alien records entered in the NCIC (National Crime Information Center) and immigration information from every alien file maintained by the Department of Homeland Security – approximately 93 million records – by accessing the IAQ (Immigration Alien Query) database through the NCIC.¹⁵

Law enforcement officials with probable cause to believe that an alien is in violation of U.S. immigration law may contact the LSEC to determine whether ICE wishes to take custody of the alien.¹⁶

Delinquency and Citizenship in Florida: Chapter 985, F.S., which governs delinquency matters in Florida, does not currently address issues regarding the citizenship of children referred to the DJJ.

In its bill analysis,¹⁷ the DJJ indicates that its juvenile probation officers (JPOs) currently ask each child referred to the DJJ during intake whether he or she is a U.S. citizen. According to the DJJ, if the child answers yes, the intake process is completed based on the assumption that the child is in fact a U.S. citizen. If the answer is no, the DJJ notifies the child of his or her right to have the foreign consulate contacted when they are arrested and/or detained.

The DJJ analysis also indicates that it is difficult for a JPO to determine the true citizenship status of a child, as there is typically little documentation available on this issue. To overcome this barrier, the Secretary of the DJJ requested that law enforcement agencies in this state screen the names of each child taken into custody in the LSEC database; however, law enforcement agencies do not consistently perform this screening. Further, the LSEC database is limited in that it does not contain the names of all illegal aliens in the U.S.

¹⁰ 8 U.S.C.A. § 1227.

¹¹ 8 U.S.C.A. § 1227(a)(1)(C).

¹² See 8 U.S.C.A. § 1227(a)(2) (providing that an alien may be deportable if he or she has committed crimes that include specified moral turpitude offenses, aggravated felonies, drug offenses, domestic violence and stalking offenses, or child abuse).

¹³ As stated in a law review article, the federal statute defining deportable crimes seeks to incorporate by reference hundreds of state and federal criminal offenses. *FINALITY OF CONVICTION, THE RIGHT TO APPEAL, AND DEPORTATION UNDER MONTENEGRO V. ASHCROFT: THE CASE OF THE DOG THAT DID NOT BARK*, 40 USFLR 241, 244-245, Fall 2005.

¹⁴ "Prior to the September 11 attacks, immigration services and enforcement were handled by the Immigration and Naturalization Service ("INS"). After the attacks, the INS was abolished and its responsibilities were transferred to the new Department of Homeland Security, which splits immigration and naturalization services and immigration enforcement between United States Citizenship and Immigration Services and ICE, respectively." *Id.* at 278.

¹⁵ <http://www.ice.gov/graphics/news/factsheets/081204lesc.htm>, as accessed on April 2, 2006.

¹⁶ *THE QUINTESSENTIAL FORCE MULTIPLIER: THE INHERENT AUTHORITY OF LOCAL POLICE TO MAKE IMMIGRATION ARRESTS*, 69 ALBLR 179, 181, 2005-2006.

¹⁷ Department of Juvenile Justice Analysis for SB 1668, February 27, 2006.

The DJJ indicates that when a LSEC database screening indicates that a child is an illegal alien that DJJ staff call the appropriate authorities within the Department of Homeland Security; however, the typical result is a voice mail asking for a message. Staff leave a detailed message, but are rarely called back. Further, when a person does answer the call, the response is, "frequently that delinquents are not a high priority."¹⁸

Effect of bill: *The bill amends s. 985.21, F.S., to require a JPO to: (a) determine during the intake process whether each child is, or is suspected of being, illegally in the U.S.; and (b) to report each child found to be, or suspected of being, illegally in the U.S. to the DJJ and the U.S. Bureau of Customs and Border Protection if that child is the subject of a petition alleging that he or she has committed an act that would be a crime if committed by an adult.*

The bill also requires the DJJ to:

- *Establish a centralized, automated intake and screening database to collect citizenship information for all children referred to the DJJ.*
- *Establish methods and parameters for the collection of citizenship information from the U.S. Bureau of Customs and Border Protection, the Department of Law Enforcement, state law enforcement agencies, and the state court system.*
- *Share information in its database with federal, state, and local law enforcement agencies and prosecutors and courts.*
- *Adopt rules to administer the aforementioned requirements.*

Finally, the bill amends s. 985.231, F.S., to specify that a court that has jurisdiction of an adjudicated delinquent child, who resides in, or is a citizen of, a foreign country, and who is not in this country in a legal status, may: (a) notify the U.S. Bureau of Customs and Border Protection of the adjudication; (b) order that the child be returned to his or her country of origin; and (c) order the DJJ to transfer physical custody of the child to the U.S. Bureau of Customs and Border Protection for removal from this country.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.21, F.S., to require the DJJ to: report children found to be, or suspected of being, illegally in the U.S.; develop a centralized, automated database to collect citizenship information; and adopt rules to share database information with specified agencies and individuals.

Section 2. Amends s. 985.231, F.S., to authorize a court with jurisdiction of an adjudicated delinquent, who is not in the U.S. in a legal status, to notify the federal government, order the child's return to his or her country, and require the DJJ to transfer custody of the child to the federal government.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None apparent.

2. Expenditures:

¹⁸ Department of Juvenile Justice Analysis for SB 1668 at p. 3.

According to the DJJ, “an accurate fiscal note [for this bill] is impossible to do” because it cannot comply with the bill’s requirement that it establish a centralized, automated intake and screening database to collect information concerning the citizenship of children referred to the department. The DJJ indicates that automated access to the LSEC database is not available; instead, each child’s name must be manually input in the NCIC for screening by the LSEC database.

Further, the DJJ’s fiscal analysis states:

The workload associated with this bill will be substantial and might require additional JPOs to cover caseloads, which will inevitably take longer to process. It is impossible to determine at this time how many JPOs would be necessary or how much longer the process would take with each case. Additionally, the bill would necessitate the installation of new workstations that must meet specific security and access restrictions monitored in Florida by FDLE. Some of these requirements include a secure room, with limited access, and limited visibility. An individual must not be able to see the workstation from a window. FDLE also requires that individuals who have access to the system be formally trained. The training is approximately four hours with an hour-long test at the end. Each intake JPO would be required to take this training course and corresponding test to access the ICE database through the NCIC/FCIC database.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None apparent.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill provides that Florida delinquency courts may order the return of an adjudicated, foreign delinquent child who is illegally in the U.S. to his or her country of origin. Congress, however, has exclusive authority over immigration and naturalization and matters of deportation are solely within province of the federal government. Accordingly, this provision of the bill appears to be preempted by federal immigration law.^{20 21}

¹⁹ *Id.* at p. 6.

²⁰ See Immigration and Naturalization Act of 1952, 8 U.S.C.A. §§ 1101 et seq., as amended.

B. RULE-MAKING AUTHORITY:

The bill requires the DJJ to adopt rules relating to the establishment of: (a) a centralized, automated database for the collection of citizenship information for all children referred to the DJJ; (b) methods and parameters for the collection of citizenship information from various federal, state, and local agencies; and (c) methods for sharing citizenship information with federal, state, and local law enforcement agencies and prosecutors and courts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to the U.S. Bureau of Customs and Border Protection several times; however, the correct reference is the Bureau of Immigration and Customs Enforcement, as this Bureau is currently responsible for the identification, apprehension and removal of illegal aliens from the United States.

The bill requires the DJJ to establish a centralized, automated intake and screening database to collect information concerning the citizenship of children referred to the department. The DJJ indicates, however, that it cannot comply with this requirement because automated access to the LSEC database is not available. Instead, each child's name must be manually input into the NCIC for screening by the LSEC database.

The bill authorizes a state delinquency court to order the DJJ to transfer physical custody of specified children to the U.S. Bureau of Customs and Border Protection. The DJJ, however, has no authority to require the federal government to accept custody of a child.

Finally, as discussed *supra* in the section of this analysis entitled, "A. Constitutional Issues" the bill unconstitutionally authorizes state delinquency courts to order the return of an adjudicated, foreign delinquent child who is illegally in the U.S. to his or her country of origin.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

²¹ See *Torros v. State*, 415 So.2d 908 (Fla. 2d DCA 1982) (court could not order illegal alien to be deported to Cuba if he violates probation because of preemption of federal law; however, court could recommend deportation to federal authorities); and *I.H. v. State*, 656 So.2d 622 (Fla. 2nd DCA 1995)(court could not order deportation of child upon completion of commitment, but could recommend deportation to the federal authorities).